FILE COPY

Office-Supreme Court, U.S.
FILED
APR 19 1960
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1959

No. 792

RONALD MOLITOR, a Minor, by PETER MOLITOR,
his father and next friend,
Petitioner,

v.

KANELAND COMMUNITY UNIT DISTRICT NO. 302,
Respondent.

REPLY BRIEF OF PETITIONER FOR A WRIT OF CERTIORARI

REID, OCHSENSCHLAGER, MURPHY & HUPP,
75 Stolp Avenue,
P. O. Box 646,
Aurora, Illinois,
Attorneys for Petitioner.

WILLIAM C. MURPHY,
FRANK R. REID, JR.,
L. M. OCHSENSCHLAGER,
Of Counsel.

Printed by EXPRESS PUBLISHING CO., 1003 Second St., Shabbona, Illinois, Telephone 4-1141

IN THE

Supreme Court of the United States

October Term, 1959

No. 792

RONALD MOLITOR, a Minor, by PETER MOLITOR,
his father and next friend,
Petitioner,

v.

KANELAND COMMUNITY UNIT DISTRICT NO. 302,
Respondent.

REPLY BRIEF OF PETITIONER FOR A WRIT OF CERTIORARI

Argument

Respondent's arguments lack logic and authority on both the jurisdictional and substantive grounds.

Reasons for Granting the Writ

This is the most epochal case affecting the judicial process to come before this court in the past 20 years.

The Supreme Court of Illinois—and respondent agrees with this fact—decided that one injured child might recover while another child injured *at the same time* could not recover for personal injuries against the Kaneland School District.

The decision strikes at the very roots of all the notions and equality of fair treatment which are the very heart beat of our law.

This court can grant the writ and decide whether or not such a decision comports with the constitutional requirements of Due Process and Equal Protection of the Laws.

If this court fails to grant certiorari herein, it will abandon by default the cherished principle of equal protection of the laws, and will make rights dependent upon a race to the court house.

All of the cases cited by respondent purportedly holding that the petition was decided on a state ground, or that the intervention was not proper under Illinois law, fall before respondent's bald statement:

> "The Court's decision is not res judicata as to petitioner. It is stare decisis."

In other words, the petitioner herein will not be permitted to recover under the doctrine of stare decisis.

If Petitioner is being unconstitutionally deprived of a right to recover, what difference does the label put on that denial make?

To send the Petitioner back for a fruitless and expensive junket through the Illinois State Trial and Appellate Courts in the face of the language of the opinion squarely terminating his rights, is a course that smacks of Dickens and not of 1960 common sense.

Finally, Kaneland apparently concedes that Petitioner Ronald Molitor has been discriminated against by the opinion restricting the operation of the decision abolishing school district immunity to only one of the children on the bus which exploded.

Kaneland attempts to justify this conceded discrimina-

tion by stating that the Supreme Court of Illinois discriminated against everyone who had been injured before its decision was announced abolishing school district immunity.

This is not the question.

The question squarely is, can two maimed children injured at the same instant by the same person, be treated so differently that one *has* the right to a recovery for his injuries and the other *has not* such right?

This court should answer that question once and for all in the emphatic negative.

Respectfully submitted,

REID, OCHSENSCHLAGER, MURPHY & HUPP,
75 Stolp Avenue,
Aurora, Illinois,
Attorneys for Petitioner.

WILLIAM C. MURPHY,
FRANK R. REID, JR.,
L. M. OCHSENSCHLAGER,
Of Counsel.